

II. REMARKS

A. Introduction

Applicant submits this Response in a bona fide attempt to (i) advance the prosecution of this case, (ii) answer each and every ground of objection and rejection as set forth by the Examiner, (iii) place the claims in a condition for allowance, and (iv) place the case in better condition for consideration on appeal. Applicant respectfully requests reexamination and reconsideration of the above referenced patent application in view of this Response.

As indicated above, Claims 13 and 26 have been amended. The specification has also been amended to clarify Applicant's claimed methods.

Applicant respectfully submits that the noted amendments merely make explicit that which was (and is) disclosed or implicit in the original disclosure. The amendments thus add nothing that would not be reasonably apparent to a person of ordinary skill in the art to which the invention pertains.

B. Priority Claim

As indicated above, the instant application is a Division of U.S. Application No. 10/196,474, now U.S. Pat. No. 6,719,705, which is a Division of U.S. Application No. 09/684,104, now U.S. Pat. No. 6,537,225, which claims priority to U.S. Provisional Application No. 60/158,097, filed October 7, 1999. Applicant is accordingly requesting that the application be amended to reflect the noted reference to each of the prior filed, related applications.

On December 22, 2004, Applicant also submitted a Petition to the PTO Office of Petitions to accept the unintentionally delayed priority claims to U.S. Application No. 10/196,474. A copy of the Petition and duly executed Substitute Declaration, claiming priority to the noted application, are enclosed herewith.

C. Response to Objections

1. Specification

The Examiner has objected to the specification "as failing to provide proper antecedent basis for the claimed subject matter." The Examiner contends:

The specification fails to provide adequate support or antecedent basis for a method wherein central venous drainage is determined from a rate of change of absorbance values comprising the step of computing a blood parameter at a first probe position based on the first probe position absorbance, as claimed. A method is disclosed

wherein a blood parameter at a first probe position is computed based on the first probe position absorbance (paragraph 000125 of the instant specification), but that method fails to also include determination of central venous drainage.

The specification further lacks antecedent basis for such a method comprising a step of moving the extremity to a plurality of extremity positions relative to the first probe position. The specification describes such a method wherein the extremity bearing a second probe is moved to a plurality of extremity positions relative to the location of a first probe (paragraph 000126 of the instant specification), but fails to describe such a method wherein the extremity bearing a first probe is moved to a plurality of positions relative the initial position of the extremity, as claimed.

Finally, the specification lacks antecedent basis for such a method wherein the rate of change of absorbance at each of the plurality of extremity positions is compared with the first probe absorbance to determine a plurality of rate of change absorbance values.

As indicated above, Applicant has amended the specification to clarify the claimed methods.

2. Claims

The Examiner has also objected Claim 26. The Examiner correctly notes that the “said second passage” should read “said second radiation after passage.” Applicant has amended Claim 26 accordingly.

D. Response to Rejections

1. 35 U.S.C. § 102

The Examiner has rejected Claims 26 and 27 “under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent No. 6,537,225 to Mills.” The Examiner notes:

The applied reference has a common inventor with the instant application. Based on the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e).

As indicated above, the instant application is a division of U.S. Application No. 10/196,474, which is a division of the applied reference, i.e., U.S. Application No. 09/684,104, now U.S. Pat. No. 6,537,225.

Due to Applicant's inadvertent and, hence, unintentional error, priority to the prior Application No. 10/196,474 was not properly claimed when the instant application was filed. Applicant has accordingly submitted a Petition to accept the priority claim to Application No. 10/196,474, which Applicant is confident will be granted.

Applicant accordingly respectfully requests that the Section 102(e) rejection be withdrawn upon the grant of Applicant's Petition.

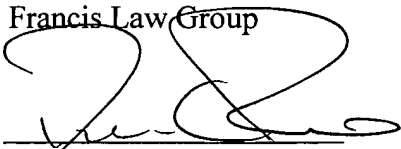
III. CONCLUSION

Applicant having answered each and every ground of rejection as set forth by the Examiner, and having added no new matter, believes that this response clearly overcomes the references of record, and now submit that all claims in the above-referenced patent application are in condition for allowance and the same is respectfully solicited.

If the Examiner has any further questions or comments, Applicant invites the Examiner to contact his Attorneys of record at the telephone number below to expedite prosecution of the application.

Respectfully submitted,
Francis Law Group

By


Ralph C. Francis
Reg. No. 38,884

Dated: December 22, 2004
FRANCIS LAW GROUP
1942 Embarcadero
Oakland, CA 94606
(510) 533-1100